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November 13, 1998

**BY HAND DELIVERY** (original and two copies)

Ms. Magalie Roman Salas, Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

RECEIVED

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: *Ex Parte* Filing in CC Docket No. 98-146, Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996

Dear Ms. Salas:

Pursuant to Section 1.1206 of the Commission's Rules, 47 C.F.R. § 1.1206 (1997), this is to provide notice of an *ex parte* filing in the above-referenced proceeding. In its reply comments filed in Docket No. 98-146, WinStar Communications, Inc. ("WinStar") addressed the competitive barrier of exclusive contracts entered into between incumbent local exchange carriers ("ILECs") and individual building owners. WinStar attached to its reply comments a copy of one such exclusive contract utilized by BellSouth Telecommunications, Inc.<sup>1</sup> Since filing its reply comments, WinStar located another exclusive contract utilized by US West Communications, Inc. ("US West"), which WinStar believes may assist the Commission in its investigation. Therefore, WinStar is submitting a copy of the US West exclusive contract to several Commission staff involved in this proceeding. A copy of this exclusive contract is enclosed.

No. of Copies rec'd  
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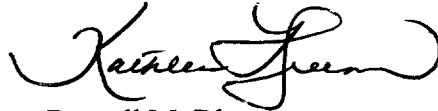
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<sup>1</sup>See Reply Comments of WinStar Communications, Inc. at 9 n.6.

Ms. Magalie Roman Salas  
November 13, 1998  
Page 2

Please date-stamp the enclosed extra copy of this filing to acknowledge receipt by the Commission.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kathleen Greenan", written in black ink.

Russell M. Blau  
Kathleen L. Greenan

Enclosure

cc: John W. Berresford  
Johnson Garrett  
Alexander Byron  
Benjamin Freeman  
Jennifer Fabian  
Robert Berger  
Russell Merbeth

## AGREEMENT FOR BUILDING OWNER SERVICES

This Agreement is made by and between U S WEST Communications Inc. ("USWC"), and \_\_\_\_\_, with offices for transaction of business located at \_\_\_\_\_ ("Building Owner").

In consideration of the promises, mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, USWC and Building Owner agree as follows:

1. **TERM.** This Agreement shall commence on \_\_\_\_\_, 19\_\_ ("Effective Date"), and continue for \_\_\_\_\_ years from that date. The parties may extend the term or any subsequent term by executing a separate written agreement of extension prior to the expiration of the term.

2. **SCOPE OF SERVICES.**

Building Owner will endorse USWC as the preferred full service provider of communications and vendor of choice to the Building Owner's tenants which will be located at \_\_\_\_\_. Square footage available for lease at this location is \_\_\_\_\_. Building Owner will deliver USWC provided literature to future and current tenants. Building Owner will not enter into another endorsement agreement with any other telecommunications provider including but not limited to revenue sharing agreements during the term of this Agreement. To the extent not otherwise prohibited, Building Owner will provide a list of tenants which shall include the company name, company address, and contact telephone number on the Effective Date of this Agreement and hereafter when there are any changes to the tenant list or there are intentions to lease space to a prospective lessee. Building Owner agrees to purchase for its own use local access service from USWC during the term of this Agreement. These together shall be referred to as ("Service") herein.

In return USWC will provide Building Owner a credit toward customer premises equipment including video conferencing equipment, data equipment, single line sets, key systems, PBXs or voice messaging equipment at USWC's list price, or a cash payment as calculated in Section 3, and provide Building Owner and Building Owner's tenants with discounted or waived rates for selected USWC services (e.g., Tenant Solutions services). PBXs obtained under this offer may only be used for Building Owner's personal use or the personal use of its tenants to whom Building Owner may transfer the equipment. USWC's variety of services is intended to enhance the value of the leased space.

3. **COMPENSATION/CALCULATION.**

Upon execution, and annually thereafter, Building Owner will be compensated with a credit toward customer premise equipment at its list price. The credit value is calculated at \$10,000 for each 100,000 square feet of lease space ("Compensation"). Alternately, Building Owner may elect to receive a cash payment of \$4,000 for each 100,000 square feet of space for lease or a combination of equipment credit and cash. To be eligible for Compensation, individual buildings must exceed 200,000 square feet.

USWC will annually review the total local network services monthly recurring revenues generated by the building tenants ("Revenues"). If the Revenue drops to a level that is less than 95% of the Revenue on the Effective Date (adjusted for occupancy levels), USWC may, at its option, terminate this Agreement, pursuant to Section 7, TERMINATION FOR CONVENIENCE. In the event this Agreement is terminated or canceled for any reason prior to its the expiration of the term, any remaining undisputed compensation due to Building Owner will be calculated pursuant to this section and paid in cash.

4. **OTHER BENEFITS TO BUILDING OWNER.** As additional consideration for Building Owner's satisfactory performance of the Services, USWC agrees to the following which, in addition to Section 3, shall constitute the total obligation of USWC to Building Owner:

- a. Account team assigned to Building Owner's building.
- b. Provided that the services are at the same business location as in Section 2, Building Owner will be eligible for:
  - Free voice mail box and optional features

- Discounted or waived rates in the Tariff, Price List, and/or Catalog for Tenant Solutions services
- Volume discounts for Unistar/Repair Coordination Service ("RCS") maintenance plans
- Discounts on fax services, as determined by USWC
- Tenant Calling Connection Plan (discounted IntraLATA Intrastate Toll Plans) if available
- Discounts on purchase price of pagers, as determined by USWC.

**5. REVIEW AND ACCEPTANCE.** USWC may audit Services performed by Building Owner. USWC shall notify Building Owner in writing if the Services do not conform to this Agreement. Building Owner shall correct such nonconforming Services within 15 days from such notification. USWC shall not waive any rights and remedies which USWC has or may have under this Agreement or under law.

**6. ADVERTISING; PUBLICITY.** A party may make references to the other party's (and/or any of its affiliate's) names, marks, codes, drawings, or specifications provided it first obtains the written permission of the other party.

**7. TERMINATION FOR CONVENIENCE.**

Either party may terminate this Agreement, in whole or in part, for its convenience by providing thirty (30) days written notice to the other party. If this Agreement is so terminated, USWC is only liable for Compensation required by the terms of this Agreement for services rendered prior to the effective date of termination.

If Building Owner terminates this Agreement for its convenience or the Agreement is terminated due to Building Owner's default within the first year of the Effective Date of this Agreement, the customer premises equipment or prorata cash payment as described in Section 3 will be returned to USWC. If either party, pursuant to this Section 7, terminates for convenience, any remaining undisputed compensation due to Building Owner will be calculated and paid in cash, pursuant to Section 3. COMPENSATION/CALCULATION of this Agreement.

**8. CANCELLATION OF AGREEMENT FOR DEFAULT.**

Either party may terminate this Agreement for cause provided written notice specifying the cause for termination and requesting correction within thirty (30) days is given the other party and such cause is not corrected within such thirty (30) day period. Cause is any material breach of the terms of this Agreement.

This Agreement may be terminated by either party giving notice to the other at any time after the occurrence of the following events: (a) a receiver, trustee, or liquidator of the party is appointed for any of its properties or assets; (b) the party makes a general assignment for the benefit of creditors; (c) the party is adjudicated as bankrupt or insolvent; (d) a petition for the reorganization of the party or an arrangement with its creditors, or readjustment of its debt, or its dissolution or liquidation is filed under any law or statute; (e) a party ceases doing business, commences dissolution or liquidation.

If either party, pursuant to this Section 8, cancels this Agreement for cause, any remaining undisputed compensation due to Building Owner will be calculated and paid in cash, pursuant to Section 3, COMPENSATION/CALCULATION of this Agreement.

**9. LIMITATION OF LIABILITY.** Each party shall be responsible for any actual physical damages it directly causes to the other in the course of its performance under this Agreement, limited to damages resulting from personal injuries, death, or property damage arising from negligent acts or omissions; PROVIDED HOWEVER, THAT NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR SPECIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO ANY LOSS OF USE, LOSS OF BUSINESS, OR LOSS OF PROFIT.

REMEDIES UNDER THIS AGREEMENT ARE EXCLUSIVE AND LIMITED TO THOSE EXPRESSLY DESCRIBED IN THIS AGREEMENT.

10. **UNCONTROLLABLE CIRCUMSTANCES.** Neither party shall be deemed in violation of this Agreement if it is prevented from performing any of the obligations under this Agreement by reason of severe weather and storms; earthquakes or other natural occurrences; strikes or other labor unrest; power failures; nuclear or other civil or military emergencies; acts of legislative, judicial, executive or administrative authorities; or any other circumstances which are not within its reasonable control.

11. **DISPUTE RESOLUTION.**

Other than those claims over which a regulatory agency has exclusive jurisdiction, all claims, regardless of legal theory, whenever brought and whether between the parties or between one of the parties to this Agreement and the employees, agents or affiliated businesses of the other party, shall be resolved by arbitration. A single arbitrator engaged in the practice of law and knowledgeable about telecommunications law shall conduct the arbitration in accordance with the then current rules of the American Arbitration Association ("AAA").

All expedited procedures prescribed by the AAA shall apply. The arbitrator's decision shall be final and binding and judgment may be entered in any court having jurisdiction thereof.

Other than the determination of those claims over which a regulatory agency has exclusive jurisdiction, federal law (including the provisions of the Federal Arbitration Act, 9 U.S.C. Sections 1-16) shall govern and control with respect to any issue relating to the validity of this Agreement to arbitrate and the arbitrability of the claims.

If any party files a judicial or administrative action asserting claims subject to arbitration, and another party successfully stays such action and/or compels arbitration of such claims, the party filing the action shall pay the other party's costs and expenses incurred in seeking such stay or compelling arbitration, including reasonable attorney's fees.

12. **LAWFULNESS.** This Agreement and the parties' actions under this Agreement shall comply with all applicable federal, state, and local laws, rules, regulations, court orders, and governmental agency orders. Any change in rates, charges or regulations mandated by the legally constituted authorities will act as a modification of any contract to that extent without further notice. This Agreement shall be governed by the laws of the state where Service is provided.

13. **SEVERABILITY.** In the event that a court, governmental agency, or regulatory agency with proper jurisdiction determines that this Agreement or a provision of this Agreement is unlawful, this Agreement, or that provision of the Agreement to the extent it is unlawful, shall terminate upon written notice to the Building Owner to that effect. If a provision of this Agreement is terminated but the parties can legally, commercially and practicably continue without the terminated provision, the remainder of this Agreement shall continue in effect.

14. **GENERAL PROVISIONS.**

Failure or delay by either party to exercise any right, power, or privilege hereunder, shall not operate as a waiver hereto.

This Agreement shall be assignable by Building Owner with the express written consent of USWC, such consent shall not be unreasonably withheld.

This Agreement constitutes the entire understanding between Building Owner and USWC with respect to Service provided herein and supersedes any prior agreements or understandings.

The parties hereby execute and authorize this Agreement as of the latest date shown below:

U S WEST Communications, Inc.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Name Typed or Printed

\_\_\_\_\_  
Name Typed or Printed

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Address for Notices

\_\_\_\_\_  
Address for Notices

This letter can be used by the Landlord (as if the landlord drafted the letter) and sent to the tenant upon execution of the tenant solutions contract

To: Tenant,

Recently U S WEST introduced a program called Tenant Solutions which is offered to targeted buildings in the Denver Metro area. The program is designed to improve your service as well as offer discounted U S WEST services to you as part of the program. We do not require you to use U S WEST as a provider in this building but offer you the opportunity to take advantage of the discounted services if you choose. A single point of contact has been assigned to this building to better respond to your needs. The key account managers are Jamie Hernandez 391-8179 and Ivy Downing at 965-8178. The key account managers can assist you in identifying the correct person to solve any service concerns or future telecommunication needs. The account manager does not place orders but serves as a facilitator for you in getting the best service from U S WEST.

In addition to the account manager, you are entitled to the following discounts:

- 50% off installation charges on business lines (for 3 or more lines only)
- Free installation on Market Expansion Line Service
- 10% off non-key equipment such as caller ID units or simple phones
- One month free and no installation charges on selected optional features and caller ID service
- Free fax services (monthly and installation) and \$20.00 usage coupon
- First month free service on pager service
- 50% off non recurring charges on premium listings
- Free internet hook up (dial up through U S WEST Interprise)

Please feel free to contact the key account manager if you have any questions or concerns about your U S WEST service.

Sincerely,

Building Manager

"The building manager and its agents shall not be liable for performance or non performance of U S WEST. Your subscription for any U S WEST Communications services will constitute acceptance of this disclaimer."

**Tenant Changes:**

Please fax all tenant changes to U S WEST so they can be "flagged" with the appropriate code in our system. Upon signing the contract all tenants on the tenant list were flagged and are automatically eligible for discounted services. New tenants or those exiting your property need to be updated in the system to be eligible for discounts.

Tenants Name: \_\_\_\_\_

Move in (out) Date: \_\_\_\_\_

Tenants Phone Numbers: \_\_\_\_\_

Would they like to be contacted by their account representative \_\_\_\_\_

Move in (out) date: \_\_\_\_\_

Fax information to:

Ivy Dowling

Fax: 303 - 896-5614

**U S WEST TENANT SOLUTIONS PROGRAM**